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**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE, NO. 01-244  
(Judge Charles W. Cope)

Case No. SC01-2670

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**SPECIAL COUNSEL'S RESPONSE TO MOTION TO STRIKE SPECIAL  
COUNSEL'S PURPORTED IN LIMINE MOTION AND SUPPLEMENT TO  
MOTIONS TO DISMISS FOR SELECTIVE AND VINDICTIVE PROSECUTION**

The Special Counsel hereby responds to Judge Cope's Motion to Strike Special Counsel's Purported In Limine Motion and to Seal Confidential Medical Records of Judge Cope and his Supplement to Motions to Dismiss for Selective and Vindictive Prosecution and states:

1. There was no express representation that the records would be released only to the Investigative Panel. The releases (copies of which are attached as Exhibit B to the Special Counsel's in limine motion) specifically release the records to "the Judicial Qualifications Commission of the State of Florida," and not merely to the Investigative Panel.

2. Moreover, any privilege has been waived because Judge Cope has chosen to rely on this information in his defense, notwithstanding Mr. Merkle's secretary's representation that he would not.

3. In the first paragraph of Judge Cope's Motion to Dismiss, for Discovery and for Hearing on the Grounds of Selective Prosecution and Vindictive Prosecution, Judge Cope states that he "had too much to drink (something for which he is deeply sorry and for which he has conscientiously sought treatment)." (emphasis added)

4. Additionally, in paragraph 55 of that motion, Judge Cope details providing

records of his "voluntary admission to an alcohol rehabilitation facility in South Florida for 30 days" and of "private counseling he had undertaken following his return from California."

5. Judge Cope goes on to state in that paragraph, "These records were provided consensually [sic] by Judge Cope upon the representation to his counsel by General Counsel for the Investigative Panel, Thomas MacDonald, that the records would be considered in mitigation of any charges that might be filed." Thus, Judge Cope has admitted that (1) he knew (indeed requested) that the records would be used if and when charges were filed and (2) he intends to use his treatment as mitigating evidence.

6. Upon receipt of his service copy of the in limine motion, Judge Cope's counsel faxed a letter demanding its withdrawal because he had communicated through his secretary on May 21, 2002, that evidence of treatment would not be offered in mitigation (notwithstanding Judge Cope's subsequent statement to the contrary quoted above). A copy of this letter is attached as **Exhibit A**.

7. In response, the Special Counsel asked the Supreme Court Clerk to refrain from filing the in limine motion and the Special Counsel advised that if Judge Cope were willing to commit to not offering evidence of alcohol treatment, the Special Counsel would agree to remove the subject portions of the motion. A copy of this letter is attached as **Exhibit B**.

8. Judge Cope's counsel responded that he was not willing to "deal with [the Special Counsel] in any way shape or form with respect to" the in limine motion. A copy of this letter is attached as **Exhibit C**.

9. Because Judge Cope continues to refuse to commit in writing to not offering

evidence of alcohol treatment, the in limine motion is even more important and appropriate. Accordingly, the Special Counsel asked the Supreme Court Clerk to file the motion after receiving Judge Cope's counsel's most recent letter.

10. The summary recitation in the in limine motion of the bare details of the what the medical records state was and is necessary to illustrate why the Special Counsel needs a ruling on this issue now. If evidence of treatment is to be offered, these examples demonstrate the importance of the Special Counsel obtaining discovery on these matters to determine whether the records are accurate.

11. Other than Judge Cope's informal (and unsworn) suggestion through counsel that the records' reference to a call from his wife are false, the Special Counsel has no reason to believe that the information in the records produced to the commission are inaccurate. The point is, however, that depositions of the relevant treatment providers are absolutely required to determine the truth if Judge Cope wishes to make treatment an issue.

WHEREFORE, Judge Cope's Motion to Strike Special Counsel's Purported In Limine Motion and to Seal Confidential Medical Records of Judge Cope should be denied.

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Louis Kwall, Esq.**, Kwall, Showers & Coleman, P.A., 133 N. St. Harrison Ave., Clearwater, Florida 33755; **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial

Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this  
\_\_ day of June, 2002.

By:  
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